

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Latrice Frazier	Team: Squad #1	CCRB Case #: 201904908	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/05/2019 4:36 PM	Location of Incident: Southbound Grand Concourse and East 188th Street	Precinct: 46	18 Mo. SOL 12/5/2020	EO SOL 7/22/2021	
Date/Time CV Reported Thu, 06/06/2019 1:13 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/06/2019 1:13 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fabian Nembhard	10675	955258	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Fabian Nembhard	Abuse: Police Officer Fabian Nembhard searched the vehicle in which § 87(2)(b) was an occupant.	
B.POM Fabian Nembhard	Abuse: Police Officer Fabian Nembhard searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On June 6, 2019, § 87(2)(b) filed the following complaint via telephone with the CCRB. On June 5, 2019, at approximately 4:36 p.m., PO Fabian Nembhard of the 46th Precinct stopped § 87(2)(b) for a traffic infraction at Grand Concourse and East 188th Street in the Bronx. PO Nembhard reached into § 87(2)(b)'s vehicle, grabbed her purse, and passed it to her through the front driver's side window (**Allegation A- Abuse of Authority** § 87(2)(g)). PO Nembhard issued § 87(2)(b) a summons. § 87(2)(b) then asked PO Nembhard for his name and shield number. PO Nembhard reached into § 87(2)(b)'s vehicle, grabbed the summons and pointed to his information on the summons (**Allegation B - Abuse of Authority** § 87(2)(g)).

PO Nembhard recorded the entirety of this incident with his body-worn camera (BWC) (**Board Review 01**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Fabian Nembhard searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Police Officer Fabian Nembhard searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Nembhard reached inside the back-passenger window, grabbed § 87(2)(b)'s purse, and handed it to her through the front-driver's window. It is undisputed that when asked for name and badge number, PO Nembhard reached inside the front-driver's window, grabbed the summons from § 87(2)(b)'s hand, and showed her his information on the summons.

PO Nembhard's BWC (**Board Review 01**) shows him approaching the rear of § 87(2)(b)'s vehicle and asking her to roll down her back windows so he can see into the vehicle. § 87(2)(b) then rolls down the back-driver's side window. PO Nembhard proceeds to the front-driver window, explains the reason for the stop and requests her driver's license and registration. § 87(2)(b) removes her driver's license and Fraternal Order of Protection (FOP) card from her wallet and hands them over to PO Nembhard. At 01:38 on the video player, § 87(2)(b) tells PO Nembhard that she is going to reach into the back and grab her purse. PO Nembhard says, where is your purse? § 87(2)(b) says it's on the floor in the back and points in the direction of the back-driver's seat. At 01:43, PO Nembhard reaches into the back-driver's window, grabs the purse and hands it to § 87(2)(b) through the front-driver's window. At 09:34, PO Nembhard hands § 87(2)(b) a summons and her documents. § 87(2)(b) asks PO Nembhard for his name and badge number. At 09:39, PO Nembhard reaches inside the driver's window, grabs the summons from § 87(2)(b)'s left hand, and points to his name on the summons. § 87(2)(b) asks for his badge number and PO Nembhard points to his badge, and § 87(2)(b) types it into her mobile phone.

PO Nembhard provided multiple reasons for reaching into § 87(2)(b)'s window. He initially stated that he reached inside the window and grabbed § 87(2)(b)'s purse because she rolled down the window after telling him where the purse was, so he assumed she wanted him to give it to her. After viewing his BWC, PO Nembhard acknowledged that the window was already rolled down when he approached the car and specified that at the time of the incident, he did not observe § 87(2)(b) point toward the back of her vehicle. He also stated that he did not want § 87(2)(b) reaching anywhere during the vehicle stop or exiting the vehicle if she was unable to reach her purse. However, PO Nembhard consistently stated that he had no safety concerns at the time he grabbed her purse. Rather, PO Nembhard stated that he grabbed the purse because he could see where it was, saying, "if it's right there, then I don't see any reason why I just can't give it to her." With regard to the reason he reached into § 87(2)(b)'s car and grabbed the summons from her when she asked for his name and badge number, PO Nembhard stated that he did so because all of his information was on the summons.

According to People v. Hernandez, 238 A.D.2d 131, an officer breaching the plane of the car doorway with his body or arm to reach inside the vehicle constitutes a search of a vehicle. There must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of a vehicle (**Board Review 02**). According to, People v. Barclay, 201 A.D.2d 952, the consent of a driver to search a vehicle is a valid substitute for probable cause (**Board Review 03**).

According to NYPD Patrol Guide Procedure 203-09, when an officer is asked for name and shield number the officer is to courteously and clearly state their rank, name, shield number and command and to allow them ample time to note the information (**Board Review 04**).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party.
- PO Nembhard has been a member of service for six years and has been a subject in three prior CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On November 25, 2019, a request was submitted to the New York City Office of the Comptroller, and will be added to the case file upon receipt.
- § 87(2)(b)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date